

**STATE OF CALIFORNIA  
Energy Resources Conservation  
And Development Commission**

In the Matter of:	)	Docket No. 07-AFC-5
	)	
Application for Certification for the	)	STAFF'S PREHEARING
Ivanpah Solar Electric Generating System	)	CONFERENCE
_____	)	STATEMENT

**STAFF'S PREHEARING CONFERENCE STATEMENT**

1. **Topic Areas Complete For Hearing.** Staff believes that all issues are ready to go to hearing. However, it notes that there is ongoing discussion of how issues under the topic of Biological Resources (concerning rare plants) might be resolved through designing the project to avoid certain areas or at least certain plant species. Staff believes these discussions can and should continue without delaying the hearings.
2. **Topic Areas Not Complete.** See above.
3. **Topic Areas That Remain Disputed and Require Adjudication.**  
The topic of **Biological Resources** is a matter of contention, with disagreement from both Applicant and the intervenors with the Final Staff Assessment (FSA) analysis. There are numerous issues. Applicant claims, among other things, that (1) Staff's requirements for the "full mitigation" of impacts to desert tortoise are excessive and beyond what is required by the California Endangered Species Act (CESA), (2) that it does not need to satisfy the requirements for a Streambed Alteration Agreement, (3) that certain special status plants on the project site do not require protection. Intervenors variously claim, among other things, that Staff's proposed CESA mitigation is inadequate to fully mitigate impacts to desert tortoise, that relocation plans are inadequate to prevent high mortality to the species, and that Staff's range of alternatives did not consider alternatives (particularly alternative site locations) that could avoid or greatly lessen impacts to the desert tortoise and other endangered species. These issues, including numerous ancillary related issues, will require adjudication.

For reasons indicated above, intervenors claim that the staff's **Alternatives** analysis is deficient. In particular, they advocate further analysis of an "alternative" that would apparently be comprised entirely of generation from solar photovoltaic panels that would be located on rooftops or other places in urban areas, thereby avoiding impacts to endangered species and use of federal lands. The issues regarding Alternatives will require adjudication.

Intervenors have identified, at the last Pre-Hearing Conference, issues in the areas of **Land Use, Cultural Resources, Facility Design and Reliability, and Air Quality**, although these issues were not specified, and have not been discussed at the workshops held since that conference. Staff does not know what issues are in contention in these areas, and does not know whether there is need to adjudicate any factual issues with regard to them. The exception is **Land Use**, where Staff has concluded that there is a significant cumulative impact to the Mojave Desert to which the renewable energy projects make a “cumulatively considerable” contribution. Applicant disagrees with this conclusion, and may request adjudication of the issue.

4. **Witness Identification.** The FSA identifies the Staff witnesses for its testimony. However, staff may identify more witnesses in its supplemental testimony. In particular, Carolyn Chainey-Davis and Dick Anderson will be added to the witnesses for Biological Resources testimony.
5. **Cross-examination of Other Party Witnesses.** Staff will want to be able to cross-examine Applicant witnesses for the topic of **Biological Resources** and possibly **Land Use**. This would require a maximum of 15 minutes per witness, which would be shortened by use of witness panels, or eliminated if, as Staff recommends, this topic is conducted using an informal hearing approach.

Staff will need as much as 15 minutes per witness for intervenor testimony in **Biological Resources** and **Alternatives**. Again, such requirements may be significantly reduced by having witnesses testify as a panel, or eliminated altogether by the use of informal hearing procedure.

Staff reserves the right and opportunity for brief cross examinations of other areas that may be adjudicated using witness testimony, where such issues are unspecified.

6. **Exhibits.** The FSA is Staff’s principle exhibit. Staff will introduce at least three additional exhibits: 1) testimony responding to applicant’s testimony regarding various conditions; 2) testimony responding to Applicant’s testimony on Biological Resources and Alternatives; and 3) an update of the information in the Preliminary Staff Assessment analysis of the transmission line that will be rebuilt to serve the Ivanpah project.
7. **Scheduling Issues.** Staff counsel for Ivanpah will be preoccupied with hearing preparation for the Carlsbad AFC immediately following the Ivanpah hearings. Carlsbad hearings are scheduled for February 1-3. During the interim period all parties will receive the transcripts from the Ivanpah hearings. Staff suggests that Opening Briefs be due no earlier than mid-February, with Reply Briefs one week later.

Staff recommends the use of informal hearing procedure for most or all of the hearing topics. Informal hearing procedure will greatly reduce the time required for hearings, and will allow for a freer interaction between the Committee and the

various witnesses and advocates. The intervenors in this proceeding are sophisticated and disciplined, so there is little likelihood that abandoning the format of formal cross-examination will create disorder or delay in the hearing. Of course, if the committee finds the informal hearing approach does not satisfy its needs, it can convert the hearing procedure to a formal hearing whenever it chooses, or for any topic where it believes that formal procedure is advantageous.

Date: December 29, 2009

Respectfully submitted

/s/ Richard C. Ratliff  
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